

# MILK RIVER WATERSHED NEWS

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## Joint Board of Control and Reserved Water Rights Compact Commission Approve Fort Belknap Compact

By Mike Dailey

The Milk River Joint Board of Control voted 8-1 to support the Fort Belknap compact after several last minute changes were included to address local concerns. The Montana Reserved Water Rights Compact Commission voted to accept the compact

with the new changes on December 6, 2000. The compact will be presented to the 2001 Montana Legislature pending approval by the Fort Belknap Tribal Council. The following article provides more information about issues associated with the compact. ✓

### INSIDE

#### Final Public Meetings on Fort Belknap Indian Reservation

Continued on Pages 2, 6 and 8

#### Opinion from Rep. Matt McCann

Page 3

#### Feasibility Study Looks at Milk River Mitigation Alternatives

Page 4 and 5

#### MRIA Applies for Federal Grant

Page 7

## Final Public Meetings on Fort Belknap Indian Reservation Compact

By Mike Dailey

The Reserved Water Rights Compact Commission (Commission) held four public meetings on the latest draft of the Fort Belknap Compact. The Commission staff wanted to provide the Milk River residents an opportunity to learn about the latest draft and to have time to address concerns. The meetings were held in Chinook, Glasgow, Malta and Havre on November 14-16 and attended by 75 people. Barb Cosens, Legal Council for the Commission told the audiences, "We have a better compact because of the participation by basin residents. The compact evolved from issues raised by the public."

The Commission staff told the audience that it plans to present

the Compact to the 2001 Montana Legislature and acknowledges the importance of local support during the legislative session if the Compact is to be approved. The Commission has made it clear that without local support, the Compact would not be presented to the legislature for ratification.

The Commission message was consistent at the public meetings. Staff emphasized the benefits the Compact will bring to the basin residents and water users. According to Cosens, this Compact will provide "certainty" to the basin's water supply. Cosens noted, "The Compact provides a mechanism for resolving disputes. It protects existing junior water rights, and it

(Continued on Page 2)

### Representatives on the Milk River JBC include the following:

Kay Blatter  
Hugh Brookie  
Melvin Novak  
Lee Cornwell  
Jack Gist

Chairman  
Vice-Chairman  
Secretary  
Member  
Member

Fort Belknap Irr. Dist.  
Malta Irr. Dist.  
Glasgow Irr. Dist.  
Glasgow Irr. Dist.  
Alfalfa Valley Irr. Dist.

Casey Kienenberger  
Knut Kulbeck  
Bim Strausser  
Brad Tilleman  
Steve Tremblay

Member  
Member  
Member  
Member  
Member

Malta Irr. Dist.  
Harlem Irr. Dist.  
Paradise Valley Irr. Dist.  
Zurich Irr. Dist.  
Dodson Irr. Dist.

tries to mitigate and minimize the impacts of Tribal water rights on existing water users.” Cosens, drawing on experiences in other states that quantified Tribal water rights through litigation, stated, “With litigation, the Tribes’ water rights still get quantified, but nothing gets done on the ground; the Tribes aren’t getting anything they don’t already have.” Negotiating the Tribes’ water rights with the Commission is a cheaper and a fairer process than going through costly litigation.

Since the last round of public meetings, the Compact has undergone a number of changes. These changes are a result of public input and issues that were still being negotiated at the time of the last draft. The significant changes to the draft Compact are identified below.

#### 1855 Priority Date

Concerns raised within the Fort Belknap Reservation prompted the change of the Tribes’ priority date from May 1, 1888 to October 17, 1855. The U.S. Congress authorized the establishment of the Fort Belknap Indian Reservation in 1888. The U.S. Federal Government signed a Treaty with the Blackfeet Nation, including the Gros Ventre Tribe in 1855. The Tribes felt that the earlier treaty date more accurately reflects the purpose for which the water rights were established for the Fort Belknap Indian Reservation. This change in Tribal priority date did not affect any state water rights on the main stem and because the tributary water rights are protected, they are also unaffected by the change.

#### Additional Tribal Water

The Tribes are entitled to market water from Lake Elwell (Tiber Dam) for off reservation use as part of this settlement. According to Randy Perez, a member of the Tribal negotiating team, the purpose of this Compact provision is to make up water in return for the Tribes’ willingness to subordinate its water rights to existing junior water users on upper Peoples Creek. It also provides minor security for

state water rights within the Missouri River Basin between Bullwacker Creek and the Musselshell River (Basin 40EJ), and it addresses some of the uncertainty a future Blackfeet water right settlement might pose. “It gives the Tribes the opportunity to market water outside the basin without using Milk River water,” said Scott Guenthner of the U.S. Bureau of Reclamation. The volume of water from Lake Elwell is still being negotiated.

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“We have a better compact because of the participation by basin residents. The Compact evolved from issues raised by the public.”

**-Barb Cosens, Legal Council for the RWRCC.**

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#### Milk River Coordinating Council

In the latest draft, the authority of the Milk River Coordinating Council—previously called the Milk River Authority—has been scaled back. The Council only has authority to coordinate storage and releases from storage, and prioritize the use of grants and loans. The Council’s authority is limited to the mainstem of the Milk River below the Eastern Crossing. It can only expand its authority with the unani-

mous consent of all Council members. The Council will consist of thirteen members, nine voting and four advisory. Voting members include: two from the Fort Belknap Tribes; three from the Milk River Joint Board of Control; one from Montana Department of Natural Resources and Conservation; one from the U.S. Bureau of Reclamation; one from U.S. Bureau of



*Barb Cosens explaining the Fort Belknap Compact in Malta*

Indian Affairs; and one at large. Advisory members would include: one from the U.S. Geological Survey; one from the U. S. Fish and Wildlife Service; one from the U.S. Bureau of Land Management; and one from the Montana Department of Fish, Wildlife and Parks.

#### St. Mary Diversion Facilities

All the negotiating parties agree that the long-term operation of the St. Mary diversion facilities is critical for the Compact to be successful. They also recognize that the diversion works are roughly thirty years beyond their designed life expectancy. The Bureau of Reclamation has estimated that the cost to rehabilitate the St. Mary diversion works would range

*(Continued on Page 6)*

# OPINION

## Dear Communities and Producers of the Milk River Basin:

This letter is devoted to discussion of the Fort Belknap Water Rights compact entered into by the Gros Ventre and Assiniboiné Tribes of Fort Belknap Indian Reservation and the State of Montana. The Compact Commission, appointed to create and negotiate water compacts, believes their work with the Fort Belknap compact is finished. If and when the Fort Belknap Tribal Council endorses the compact, it will be forwarded to the state legislature for approval.

In this letter, I will express some opinions as well as ask some obvious questions. I cannot explain the intricacies of this compact, simply because there are no short explanations. However, as always, I am available to the public on this subject as well as other public concerns.

### ***Is the Fort Belknap Compact realistic, and will it work?***

I believe the mechanics to the compact will work over time. The compact is crafted to address water right allotments to the Fort Belknap Tribes while providing off Reservation mitigation. Mitigation is a descriptive word for additional water storage, delivery system improvement, or other alternatives to make up water losses to non-Tribal water users as a result of the Tribes developing their water rights. Engagement of the compact does not bring immediate change in irrigation practices or allotments. Over time, the compact will create possible changes that will be addressed through mitigation.

### ***What happens if there is not a water compact?***

The alternative to a water compact is simply a water right determined by a court of law. For instance, if the irrigators of Fort Belknap Tribes decide that a water compact is not acceptable, the final resolution is the court of law. If determined in the courts, a water right would be established, but mitigation efforts and enhancements or improvements to the basin would not take place. Obviously, the best solution is for the Fort Belknap Tribes and the State of Montana to reach mutual agreement.

The Fort Belknap Tribes have a right to water. The compact has been designed to designate to the Fort Belknap Tribes an allotment of water with logical limitations on the amount.

The Milk River Basin irrigation future is economically tied to the compact. This statement becomes very apparent to producers using the river as a water source versus producers who do not. Tribal and non-Tribal water users must all be able to prosper. Meeting basin needs and successful implementation of the compact will require planning. Meeting the needs of only one or two entities is not acceptable in Northern Montana's Future. The Milk River Basin is undergoing an organizational transformation. Over the past five years, the Bureau of Reclamation (BOR) and the Montana Department of Natural Resources and Conservation (DNRC) have become more involved in planning efforts in the Basin. The Fort Belknap Compact has been a driving force in organizing entities in the Basin. With prodding from the BOR and DNRC, the irrigation districts have created the Milk River Project Joint Board of Control (JBC). Formation of the JBC was instrumental in unifying the Milk River Project Irrigation Districts. Additionally, a watershed group called the Milk River International Alliance (MRIA) has formed. The MRIA is a self-appointed, quasi-private group of basin residents and government agencies involved in promoting education, resource planning, and providing local direction to regulatory issues that face the Basin.

As a result of the Irrigation Districts organizing, early in the compact negotiations, the Saint Mary Project came to the forefront. The project needs rehabilitation that may cost over \$100 million. Solutions as to how to approach this mega-money-eating project is still forthcoming. Results of the technical work that went into the Compact have given irrigators a reality check. With existing demands on the Milk River, there is no way to meet future expectations without the Saint Mary Project regardless of mitigation. The loss of Saint Mary would economically devastate the basin.

Practically all irrigation water in the Milk River comes from the Saint Mary Project. The rehabilitation of St. Mary is recognized in the compact but not included. We are all on the same boat that leaks. All users of the Milk River will be needed to make Congress aware of our project if it is to be preserved.

A question I sometimes ponder is: *Do all of the players involved in the compact have the foresight to envision the future of the Milk River Basin?* I personally reflect on development to the North of us in the Southern Alberta region. When travelling I see irrigation development, which in turn allows for intensive livestock development. The region reflects this spin-off economic prosperity. The Alberta irrigation development is probably an example of planning, some good fortune, and a working relationship between the private sector and government in various forms.

### ***Should you support the water compact for the Fort Belknap Tribes or the Montana State Legislature?***

Answer: That is your decision. I know that so far, most people do support the compact, but are uncomfortable not knowing the absolute impacts. This is a reasonable apprehension, and the water compact addresses this dilemma. The compact contains what I call "haywire clauses" that allows withdrawal from the compact. I do not want to mislead anyone that clauses such as this are just that easy. The point is that in the event the compact is not serving the needs of the basin, or is simply not working, language exists that allows for withdrawal from participation in the compact by the Fort Belknap Tribes or the State of Montana.

I hope interested parties have not come to premature conclusions of this compact. The best approach is to ask for the answers to the concerns that may exist. The compact is needed, and I am available to answer question or assist in the Fort Belknap Compact.

Respectfully,  
Rep. Matt McCann

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# Feasibility Study Looks at Milk River Mitigation Alternatives

By Lenny Duberstein, USBR

The Bureau of Reclamation received funding in November 2000 to begin conducting the North Central Montana Regional Feasibility Study. The study will evaluate water supplies, uses and needs in the St. Mary, Milk and Marias River basins. Efforts will focus on major water-related issues and opportunities to solve these issues.

The study is being coordinated with negotiators who are working to settle the water right claims of the Tribes of the Fort Belknap and the Blackfeet Reservations. Since the negotiations with the Fort Belknap tribes are at an advanced stage, much of the study effort to date has gone into identifying and evaluating several options to mitigate the impacts the proposed settlement might have on folks who are presently using water from the Milk River. This impact is estimated at about 35,000-acre feet less water available for diversions from the Milk River during critical low flow years. Coordination with the Blackfeet Tribe will work toward incorporating potential impacts from settlement of their water rights, which have not yet been identified.

The feasibility study will evaluate costs, benefits, and water quality impacts of proposed measures in enough detail to determine if implementation or construction funding should be pursued. The proposed compact identifies several mitigation options that Reclamation will be looking at in more detail in the feasibility study. These options fall into the following three categories: 1) Improving water management; 2) Increasing water storage in the Milk River Basin; and 3) increasing water supply into the Milk River Basin.

## **Improved Water Management**

This group of options is being looked at to improve the efficiency of water operations and use in the basin.

- On-Farm Water Conservation looks at ways of reducing demands by improving irrigation efficiencies. An irrigation study last year estimated that irrigation efficiencies in the basin are presently around 43 percent and could be improved to about 62 percent. Preliminary analysis indicates that a 5 percent efficiency improvement in the basin would potentially reduce demand by about 25,000 acre-feet at a cost of about \$2 million. These early estimates will be looked at more closely since questions have been raised regarding how conserved water will impact basin supplies.

- Canal System Improvements will evaluate ways to deliver water more efficiently. Available data indicates that around half the water diverted from the river flows to the farmer's headgate. More data is needed to verify more accurately where this water is going. These data will also help identify specific options for improving delivery efficiencies such as improved water measurement, monitoring and automation of check gates, lining and piping of canals or laterals, regulation reservoirs, etc. These improvements will be evaluated to determine their potential effect on water supplies and the environment of the basin.
- River System Management will be evaluated to see if there are better ways of monitoring and controlling river flows to better match water needs. A considerable amount of unused water flows out of the basin each season. Additional gaging stations, like the one installed at Cree Crossing by Nelson Reservoir will be considered along with remote operation of some diversion dam and canal gates to see if some of the unused flows can be utilized.
- The Nelson Pumping Plant option will look at catching some of the unused flows of the Milk River by pumping them up 70 feet in elevation to Nelson Reservoir. A range of sizes from 6 to 150 cfs are being looked at, with estimated costs ranging from about \$500,000 to \$4.5 million, respectively. This plan may increase water supplies to canal diversions by up to 28,000 acre feet during critical years and also provide benefits for the Piping Plover, which is listed by the U.S. Fish and Wildlife Service as a threatened species. A closer look at daily river flows is needed to determine an appropriate pumping plant size.
- A "water marketing" concept for the basin, which would allow for water trading among willing sellers and buyers, will be explored. Several options will be explored including: 1) Purchasing water in dry years from willing irrigators; 2) Purchasing water on a permanent basis from willing irrigators; and 3) Developing an open market for trading water throughout the basin, allowing the price to vary according to what people are willing to pay.

(Continued on Page 5)

### **Additional Water Storage in the Milk River Basin**

This set of options looks at ways to increase the use of water by building additional storage facilities in the basin.

- Enlarging the storage capacity at Fresno Reservoir is being evaluated. Fresno Reservoir is filling with about 500 acre-feet of sediment per year. Storage capacity, originally 130,000 acre-feet, has shrunk to about 93,000 acre-feet. Preliminary studies show that the cost for raising the dam will be around \$30 to \$40 million, due in part to the need to modernize the facility. There appears to be little benefit of an enlarged reservoir during critical years when there may not be water to fill it, but the future loss of capacity to sedimentation has to be considered.
- The plan to increase storage of Nelson Reservoir includes constructing a dike across a narrow section of the reservoir, forming two reservoirs and raising the water surface of the upper reservoir by approximately 15 feet. The cost is estimated at \$8 million. Initial model runs indicated little benefit from increased storage at Nelson, but reduced storage capacity at Fresno Reservoir had not been considered.
- Construction of new storage facilities on tributaries to the Milk River is being considered on Peoples, Beaver and 30 Mile Creeks. So far



*The United States Geological Survey installed this new gage to measure Milk River flows at Cree Crossing near Saco.*

preliminary work has been done assessing the potential benefits of a 30,000 acre-feet capacity reservoir on lower Peoples Creek. Preliminary costs are estimated at about \$31 million showing benefits of 4,500 acre-feet in critical years. The other sites will also be looked at.

### **Alternatives to augment the water supply in the basin**

- Several options for augmenting or transporting additional water into the Milk River Basin have been evaluated in the past. Three of these alternatives, Missouri River at Virgelle to the Milk by Havre (Virgelle), Duck Creek on Fort Peck Reservoir to Glasgow Canal at Vandalia, and Tiber Reservoir to the Milk River above Havre will be updated. Updated cost for a 175, 200, and 230 cfs Virgelle Pumping Plant and Canal have been calculated with costs in the \$50 to \$60 million range. Additional work is needed to quantify the benefits of these options. Arsenic is a major concern with these alternatives since arsenic levels are higher in the Missouri River than in the Milk River and these alternatives may violate State water quality standards. Transporting water from Tiber Reservoir will be more costly, but may be more acceptable.
- Rehabilitation of the St. Mary Canal has been identified as essential to the permanent success of the Fort Belknap Compact and to the continued irrigation of lands on the Milk River. Features of the canal, including the diversion dam and headworks, siphons and drop structures, were constructed in the early part of the century and are in need of replacement. Over time the canal capacity has reduced to around 660 cfs, from original designs of 850 cfs. The cost of rehabilitation of the canal, which will include measures to address environmental impacts on the St. Mary River, is estimated to be around \$90 million for a system that would provide more than half the water supply for the Milk River during critical years.

Work on the feasibility study is only beginning. We expect that several additional alternatives will be identified and evaluated over the two-year schedule for the study. Public scoping sessions will be scheduled this spring so that people in the region can provide input and direction to our work. As we learn more we anticipate that early estimates of costs and benefits will change. ✓

between \$100 million to \$200 million. The negotiating parties acknowledged that they can neither predict nor dictate Congressional action to rehabilitate the diversion facilities. But they fear that if the cost of rehabilitating the St. Mary Diversion were included in the Compact, the chances of ratifying the compact by the Congress would be diminished considerably. A

parallel process will be initiated by the negotiation parties, which include the United States, the Blackfeet Nation, and the Milk River Project water users to seek authorization and funding for rehabilitation of the St. Mary diversion works. The compact should increase awareness within Congress of the need to rehabilitate the St. Mary diversion works.

#### The Uncertainties

Although the Compact brings certainty to the reserved water rights of the Fort Belknap Tribes, in other respects, it brings uncertainty. Fear of the future also accompanies change.

Many of the concerns raised in the public meetings have been addressed in last minute changes to the compact after talks between the Joint Board of Control and the Commission.

The challenge is for Commission staff to find acceptable solutions to the following issues in order to draw more public support for the compact.

#### Mitigation Projects are not Specifically Outlined

Some basin residents are concerned that the Compact did not identify specific measures to mitigate the effects of the tribal water rights. They want assurance that Congress would authorize and appropriate adequate funding to construction the mitigation measures. The Commission staff identified a number of issues and problems with

"I guess my greatest concern is our ability to opt-out of the Compact if conditions in the compact aren't being met."

**-Mel Novak, President of Glasgow Irrigation District.**

"locking in" on specific mitigation projects at this time. The negotiating parties did not feel they should be the ones selecting the mitigation projects. They believe that the Bureau of Reclamation should recommend the appropriate mitigation measures after completing its feasibility studies. Four million dollars has been granted to the Bureau of Reclamation from the Rocky Boy Compact to conduct feasibility and environmental studies on a number of mitigation options within the Milk River Basin. Only after these studies are completed, will information be available for selecting the appropriate mitigation measures. Cosens cited problems with the Animas - La Plata Project in Colorado that was included in the Southern Ute Tribal Compact. "This project had been authorized and funded," Cosens stated, "but after the environmental review process was completed, the project as designed was determined to be unfeasible."

#### HYDROSS Model

HYDROSS is a water accounting model that was

developed by the Bureau of Reclamation to estimate how water supplies are used and managed within western river basins. The model is being used in the St. Mary and Milk River Basins to assess the effects of developing the Tribes' reserved water rights on existing water users and the amount of water that would be made available by the different mitigation projects. There has been a number of questions on

the information used in the model. The model has estimated that 35,000 acre-feet of water would be needed each year to mitigate the development of the tribal water right. The Commission staff contends that the results from the model can only be used as a relative measure of the effects of the Tribal water right and cannot be considered as a precise volume. The Bureau of Reclamation will have a better grasp of this number after completing the feasibility studies. To alleviate these fears, the negotiating parties added language to the Compact to ensure that, at least 35,000 acre-feet per year would be the amount of water that must be mitigated, and that if the Bureau's studies show



Water users listening to Commission staff discuss the proposed Fort Belknap Compact in Chinook.

# Milk River International Alliance Applies for Federal Grant

By Paul Azevedo

In November 2000 the Milk River International Alliance (MRIA) applied to the Montana Department of Environmental Quality (DEQ) for project funding available through section 319 of the Federal Clean Water Act. The 319 funds, which the U.S. Environmental Protection Agency grants to the states, are intended to support local watershed efforts. The MRIA is seeking funding support to begin addressing some of the natural resource concerns identified at the 1999 Milk River Know Your Watershed educational workshop. The funds will be used to complete a two-year data collection and education effort known as the Milk River Watershed Project. The goals of this project are as follows:

Complete a natural resource assessment to provide baseline data on water quality, water quantity, weeds, and riparian health.

- Information collected will allow local residents and natural resource managers to prioritize resource concerns and begin developing alternatives to address the concerns.

Implement practices to improve natural resource conditions in the basin.

- Work with Conservation Districts, Irrigation Districts and willing landowners to implement locally crafted best management practices (BMP) demonstration projects designed to enhance water quantity and water quality in the basin.

Provide information and education for Milk River Basin residents.

- Implement educational and outreach programs designed to increase local knowledge and understanding of the importance of water quality and quantity to all basin residents.

The total project budget is estimated to be \$441,780 over two years. The MRIA has requested \$112,500 from the 319-grant program. State and local (\$185,600), and federal (\$143,680) matching funds and in-kind services cover the remainder of the budget. In-kind contributions and matching funds do not require any local, state, or federal organization, or agency to expend additional funds in support of the project. Matching funds and in-kind contributions account for, and give credit to, all the individuals, organizations, and agencies that are actively working in the watershed. For example:

- Water conservation plans developed and implemented by local irrigation districts and the Bureau of Reclamation;
- A landowner who donates the use of a tractor to complete a BMP project;
- Time spent by the local Extension Agent educating producers on issues that affect their operations; and
- Time spent by local citizens who may wish to become involved in organizing a watershed festival.

If the MRIA's proposed project is selected for funding the work will begin in the fall of 2001. ✓

## DID YOU KNOW

The shoreline of Fort Peck Reservoir is longer than the coastline of California.

The longest free flowing river in the lower 48 states is the Yellowstone River

Flathead Lake is the largest freshwater lake west of the Mississippi.

If you have ideas for articles or news items, please contact:

**Michael Dailey**  
MT DNRC — Glasgow  
Water Resources Regional  
Office  
222 Sixth Street South  
P. O. Box 1269  
Glasgow, MT 59230-1269  
(406) 228-2561

**Kristi Kline**  
City of Havre  
P. O. Box 231  
Havre, MT 59501  
(406) 265-9031

**Wallace Elliot**  
Fort Belknap Irrigation District  
Rt. 71 — Box 38  
Chinook, MT 59523  
(406) 357-3353

**Kay Blatter**  
Chairman, Milk River Joint  
Board of Control  
RT 1 Box 105  
Chinook, MT 59523  
(406) 357-2931

**Gary Knudsen**  
Irrigator  
HC 72 Box 7285  
Malta, MT 59538

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DNRC— Water Management Bureau,  
Helena (444-6637)  
Editor: Rich Moy  
Graphic Designer: Devri Roubidoux

(Continued from Page 6)

more water is needed, this number will be increased accordingly.

### *Milk River Irrigation Project Could Bear the Brunt of the Impacts*

There is a feeling among many main stem water users that the Milk River Project will bear the brunt of the impacts of the settlement while the Compact protects the tributary water users. The project water users have felt that all beneficiaries of the project should pay. The Commission has worked extensively with the Joint Board of Control to ensure that the Milk River Project will not be hurt by the development of the Tribes' water rights.

### *Ability to Opt-out of the Compact*

The Governor has the authority to withdraw from the Compact. "I guess my greatest concern is our ability to opt-out of the Compact if conditions outlined in the Compact aren't being met," said Mel Novak, President of Glasgow Irrigation District. Several irrigators voiced their worries over the actual withdrawal language in the Compact. They wanted to make sure that they had the ability to opt-out of the Compact if their water needs were not satisfied, as they existed before the compact was ratified. These irrigators questioned whether their voices would be heard. Cosens assured them that

there is no way to predict what a person will do, but it is rather unlikely that the Governor would act unilaterally on such an important issue. The Compact language was changed. It now requires the Governor to consult with the affected water users, including the Milk River Joint Board of Control before deciding whether to opt-out of the Compact.

### *Historic Treaty Rights*

A committee of Gros Ventre Tribal members is concerned with the historic treaty rights. They feel that the Fort Belknap Indian community has no legal authority to negotiate on behalf of the Gros Ventre Tribe. "This is a treaty matter, and not a matter for the Fort Belknap Indian community," said Harold Main, Gros Ventre Tribal member. He further stated, "the southern end of the reservation is getting ignored in this Compact." According to Randy Perez, the Tribal Constitution and bylaws give the Tribes the right to vote for council members and this gives the Tribal Council the authority to negotiate on behalf of the Fort Belknap Indian community. "It's the responsibility of each tribe to deal with their treaty rights," said Perez. ✓

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# MILK RIVER WATERSHED NEWS

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P.O. BOX 201601  
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